

**HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**CIVIL APPLICATION NO. 5054 OF 2005
IN
FIRST APPEAL NO. 2099 OF 2005**

M/s. Sharda Publishing Company & Ors.

..Applicants.

Versus.

Saraswati Publishing Co., Pvt.

Ltd & Ors.

..Respondents.

Shri. P. M. Havnur & Smt. V. N. Manjarekar for the
Applicants / Appellants

Shri. Amit B. Borkar for the respondents.

CORAM: DR.D.Y. CHANDRACHUD J.

DATE : DECEMBER 1, 2005.

P.C.

1. Having regard to the circumstances of the case, interim relief will have to be refused, (except to a limited extent indicated hereinafter.) Learned counsel for respondent No.1 - the original plaintiffs states that during the pendency of the suit before the trial court, an ad-interim order of injunction came to be passed initially on April 7, 2003. The aforesaid order was thereafter continued and the order of injunction continued to operate by consent during the pendency of the suit.

2. Quite apart from the aforesaid position, I have perused the copies of the rival calendars which were exhibited in evidence. Prima facie, these do show that the get-up, design and visual representation in the calendar of the appellants which is called "Soubhagyalaxmi" is deceptively similar to that of the calendar of the First Respondent which is called "Dhanlaxmi". Admittedly, the prior user is that of the First respondent.

3. There shall however, be a stay of the operation only to the extent of the bracketed portion of Clause 3 of the operative directions in the judgment of the Trial Court, which reads as follows:

"The defendant Nos. 1 & 8 are hereby directed to deliver and produce in the Court all the calenders under the name "Saubhagyalaxmi" published in the year 2003, together with its labels, marks for its eraser and destruction, and"

4. Save for the aforesaid, interim relief is refused.

5. Civil Application stands disposed of accordingly.

(DR. D.Y. CHANDRACHUD J.)